

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE EDWARD RAFFEDIE, JUDGE PRESIDING

UNITED STATES OF AMERICA,

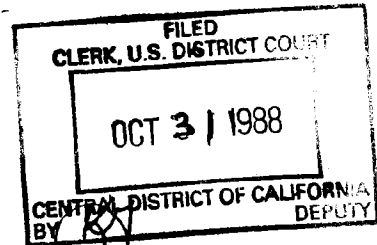
PLAINTIFF,

VS.

JESUS FELIX-GUTIERREZ, RAUL  
LOPEZ-ALVAREZ, RENE MARTIN  
VERDUGO-URQUIDEZ, ET AL.,

DEFENDANTS.

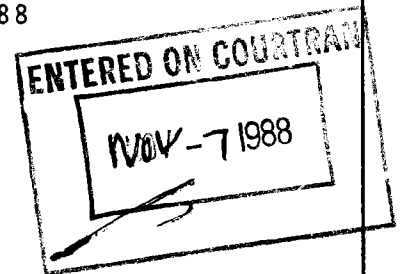
NO. CR 87-422(A)-ER



REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, SEPTEMBER 26, 1988



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SPANISH INTERPRETERS:

IRMA GARCIA  
JOSE OROZCO  
LENNE GRUSKY

LOS ANGELES, CALIFORNIA; MONDAY, SEPTEMBER 26, 1988; 11:15 AM

(  
1 (CHAMBERS CONFERENCE AMONG THE COURT, MR. GURULE,  
2 MR. CAMPOS, MR. RANDOLPH, MR. TARLOW, MS. LEYVA,  
3 MR. PANCER, AND MS. BROOKS.)

4 THE COURT: LET THE RECORD SHOW THAT THE COURT HAS  
5 CONVENED IN CHAMBERS WITH COUNSEL TO DISCUSS THIS NOTE FROM  
6 THE JURY, WHICH READS AS FOLLOWS:

7 "THE JURY HAS BEEN GIVEN TWO SETS OF  
8 INSTRUCTIONS. THERE APPEARS TO BE DIFFERENCES  
9 IN NOS. 42 AND 43. ONE SET HAS THE CASE NUMBER  
10 ON FRONT. WE WOULD LIKE CLARIFICATION ON WHICH  
11 SET TO USE."

12 WELL, FIRST TO EXPLAIN WHAT THAT MEANS, THIS IS  
13 THE SET THAT HAS THE CASE NUMBER ON THE FRONT, AND THAT WAS  
14 ORIGINALLY SENT IN TO THE JURY. I SENT IN AN EXTRA SET IN  
15 ORDER FOR MORE CONVENIENCE SO THAT THEY WOULD HAVE MORE THAN  
16 A SINGLE SET OF THE INSTRUCTIONS.

17 THE INSTRUCTIONS THAT THEY REFER TO IN THE NOTE,  
18 THE SECOND SET THAT WE SENT IN, CONTAINS THE COURT'S  
19 INSTRUCTION NO. 43, WHICH IS THE SAME AS INSTRUCTION NO. 42  
20 IN THE SET THAT WAS FIRST SENT IN TO THE JURY AFTER WE  
21 MODIFIED IT. IF YOU REMEMBER, THIS INSTRUCTION READ:

22 "IN ORDER TO ESTABLISH THE OFFENSES CHARGED  
23 IN COUNTS ONE AND TWO OF THE INDICTMENT" --

24 IT SHOULD HAVE SAID "FIVE ESSENTIAL ELEMENTS MUST  
25 BE ESTABLISHED BEYOND A REASONABLE DOUBT." WE LATER CHANGED

1 THAT TO FOUR ESSENTIAL ELEMENTS BY REMOVING THE PARAGRAPHS  
2 RELATING TO EACH DEFENDANT, AND SO THEY WERE CONFUSED BECAUSE  
3 THEY HAD BOTH VERSIONS OF THAT INSTRUCTION.

4 YOU SHOULD LOOK AT THEM SO THAT YOU UNDERSTAND  
5 WHAT IS MEANT. HERE THEY ARE. THAT IS THE CORRECT ONE,  
6 AND THIS IS THE OTHER ONE.

7 MR. CAMPOS: THE UNEDITED VERSION, YOUR HONOR?

8 THE COURT: THE UNEDITED VERSION.

9 MR. GURULE: 42 IS THE UNEDITED.

10 MR. PANCER: WHAT IS 42?

11 THE COURT: THOSE ARE THE TWO THEY ARE REFERRING  
12 TO.

13 MR. PANCER: YOUR HONOR, MAY I SEE THE NOTE AGAIN.

14 THE COURT: YES.

15 MR. PANCER: THANK YOU.

16 THE COURT: HAVE YOU SEEN THESE?

17 MS. BROOKS: COULD I INQUIRE. I DIDN'T HAVE TIME  
18 TO LOOK THROUGH THERE. IS THERE ANY REASON -- I NOTICE THAT  
19 ALL THE INSTRUCTIONS ARE OFF AS FAR AS THE NUMBERING IS  
20 CONCERNED IN BOTH PACKETS.

21 THE COURT: THAT WAS INADVERTENT. THAT WAS NOT  
22 SUPPOSED TO HAPPEN. I THINK WE WILL SEND THE ONE SET BACK  
23 AND TELL THEM THAT IS THE SET THEY SHOULD USE.

24 MR. GURULE: 42 IS THE EDITED VERSION AND 42 IS  
25 WHAT THEY SHOULD FOLLOW?

1 THE COURT: YES.

2 MR. GURULE: FINE. 43 IS THE UNEDITED AND HAS  
3 PARAGRAPH 5 THAT WE SUBSEQUENTLY DELETED AND MADE OTHER  
4 MODIFICATIONS.

5 THE COURT: YES. WE MADE SOME OTHER MODIFICATIONS.

6 MR. PANCER: IS THERE REALLY A DIFFERENCE BETWEEN  
7 42 AND 43?

8 THE COURT: NO. THAT IS RIGHT. THERE REALLY  
9 ISN'T A DIFFERENCE, EXCEPT WE CHANGED IT AROUND FROM FOUR  
10 ELEMENTS RATHER THAN FIVE.

11 LET ME SEE 43, AND I WILL SHOW YOU THE CHANGES  
12 THAT WE MADE.

13 MR. PANCER: I CAN SEE THE CHANGES.

14 THE COURT: WE CHANGED THREE ESSENTIAL ELEMENTS  
15 UP THERE TO FOUR, AND INSTEAD OF THE FOURTH ELEMENT AS TO  
16 DEFENDANT VERDUGO THAT HE WILLFULLY PARTICIPATED, WE CHANGED  
17 THAT TO READ THAT "THE DEFENDANT WILLFULLY PARTICIPATED OR  
18 AIDED AND ABETTED" AS IT NOW READS, AND WE DELETED THE  
19 PARAGRAPH RELATING TO EACH -- THE PORTIONS RELATING TO EACH  
20 INDIVIDUAL.

21 OTHERWISE, IT IS THE SAME, ISN'T IT?

22 MS. BROOKS: IT IS, YOUR HONOR. I --

23 MR. PANCER: I HAVE ONE OTHER QUESTION. IS THIS  
24 PACKAGE THAT YOUR HONOR NOW HAS, IS THAT A COPY OF THE  
25 SECOND PACKAGE THAT WENT IN?

1 THE COURT: NO. THIS IS IT. THIS IS THE ACTUAL  
2 PACKAGE. I HAD THEM BOTH BROUGHT OUT WHEN THE JURY SENT THE  
3 NOTE.

4 MR. PANCER: MAY I SEE THE FIRST PACKAGE AGAIN.  
5 IF ONE INSTRUCTION IS DIFFERENT, I AM NOT SURE THAT SOME  
6 OTHERS ARE NOT.

7 MS. BROOKS: WHAT I WAS GOING TO SAY, YOUR HONOR,  
8 IS WHAT WE MIGHT WANT TO DO -- I AM AFRAID THE JURY MAY GET  
9 CONFUSED NOW HAVING BOTH INSTRUCTIONS.

10 THE COURT: WELL, THEY ARE THE SAME.

11 MS. BROOKS: TO SEND THEM BACK AND SAY THEY ARE --  
12 THAT 42 AND 43 ARE THE SAME -- THE INSTRUCTION WAS MODIFIED  
13 IN ORDER -- FOR THE PURPOSE OF CLARIFICATION OR TO AVOID  
14 CONFUSION.

15 MR. PANCER: THIS IS MY CONCERN. THAT JURY HAS  
16 BEEN BACK THERE TWO AND A HALF DAYS PROBABLY LOOKING AT  
17 RENE VERDUGO'S CASE. THEY HAVE BEEN BACK THERE THREE AND A  
18 HALF DAYS, BUT LET'S ASSUME THAT THEY FIRST SPENT THE FIRST  
19 DAY ON RAUL LOPEZ-ALVAREZ. THEY HAVE HAD TWO SETS OF  
20 INSTRUCTIONS THEY HAVE BEEN WORKING WITH. I JUST WOULDN'T  
21 WANT TO DO ANYTHING, YOUR HONOR, TO MISLEAD OR TO INDICATE  
22 TO THEM THAT WHAT THEY HAVE BEEN DELIBERATING ON HAS BEEN  
23 INCORRECT IN ANY WAY. I DON'T THINK THERE IS A SIGNIFICANT  
24 DIFFERENCE BETWEEN THOSE INSTRUCTIONS, BUT MAYBE SOMEBODY  
25 BACK THERE SEES SOMETHING WE DON'T.

1 I WOULD PREFER JUST TO SEND IT BACK AND TELL THEM  
2 THAT WE DON'T THINK THERE IS A SIGNIFICANT DIFFERENCE  
3 BETWEEN THOSE TWO INSTRUCTIONS, PERIOD. I WOULD NOT WANT TO  
4 CHANGE SOMETHING THEY HAVE BEEN WORKING WITH FOR TWO AND A  
5 HALF DAYS.

6 MR. GURULE: WHY DON'T WE SAY THAT INSTRUCTION 43  
7 WAS MODIFIED FOR CLARIFICATION; THAT THERE IS REALLY NO  
8 SUBSTANTIVE DIFFERENCE BETWEEN THE TWO INSTRUCTIONS.

9 MR. PANCER: THERE ARE NO SUBSTANTIVE DIFFERENCES  
10 BETWEEN THE TWO INSTRUCTIONS, PERIOD. DOES THAT MAKE SENSE?  
11 WE COULD LIVE WITH THAT. I DON'T KNOW WHAT THEY SEE. IT IS  
12 A TICKLISH TIME. I WOULD PREFER THAT BOTH SETS GO BACK IN.

13 THE COURT: WELL, WE COULD PUT THEM IN THE JURY  
14 BOX AND TELL THEM THAT THESE INSTRUCTIONS ARE BASICALLY THE  
15 SAME; THERE IS JUST THAT ONE THAT WAS SHORTENED BY APPLYING  
16 IT TO BOTH DEFENDANTS RATHER THAN TO EACH INDIVIDUALLY.

17 MR. PANCER: MY REQUEST IS WE JUST TELL THEM THAT  
18 THESE INSTRUCTIONS ARE ESSENTIALLY THE SAME, PERIOD. WE  
19 COULD DO IT BY WAY OF A NOTE OR CALL THEM INTO THE BOX.  
20 THAT IS ALL I WOULD WANT TO TELL THEM.

21 THE PROBLEM I HAVE, YOUR HONOR, IS I CAN'T READ A  
22 JURY AT ALL, AND THAT IS THE PROBLEM I HAVE.

23 THE COURT: JUST A MOMENT. GIVE ME BACK THAT FIRST  
24 INSTRUCTION. IT WAS NOT ACCURATE TO BEGIN WITH. IT WOULD  
25 REQUIRE ANOTHER MODIFICATION, BECAUSE IT SAYS UP HERE IN



1 INSTRUCTION NO. 43 IN THE SECOND SET THAT THREE ESSENTIAL  
2 ELEMENTS MUST BE ESTABLISHED BEYOND A REASONABLE DOUBT. THAT  
3 IS WRONG, ALTHOUGH IT LISTS FIVE ELEMENTS HERE.

4 MR. PANCER: I AM SORRY. DID YOU SAY IT SAYS  
5 THREE ESSENTIAL ELEMENTS, AND THE OTHER INSTRUCTION TALKS  
6 ABOUT FOUR?

7 THE COURT: YES.

8 MR. PANCER: WHICH ONE ARE WE MISSING?

9 THE COURT: WE ARE NOT MISSING ANY. THAT SHOULD  
10 HAVE BEEN CHANGED, THE THREE. IT SHOULD HAVE READ "FIVE,"  
11 THE WAY THIS READS, AND THEN WE RAISED THE QUESTION ABOUT  
12 WHETHER THESE ARE REALLY ELEMENTS BECAUSE THEY ARE THE SAME  
13 ELEMENT APPLIED TO EACH DEFENDANT; AND, THEREFORE, THEY  
14 SHOULD BE TREATED AS A SINGLE ELEMENT.

15 THEN WE REDUCED IT TO FOUR, WHICH ARE CONTAINED  
16 IN THE INSTRUCTION THERE.

17 MR. GURULE: I THINK THE PROBLEM IS THEN IT WOULD  
18 BE MISLEADING TO SAY THAT THEY ARE THE SAME BECAUSE IN THE  
19 UNEDITED SET IT SAYS "THREE" AND ON THE OTHER IT SAYS "FOUR."  
20 THEN TO GO AHEAD AND SAY THAT THEY ARE THE SAME WHEN IN FACT  
21 ONE SET IS SAYING THERE ARE LESS ELEMENTS WHEN IN FACT THERE  
22 ARE FIVE ELEMENTS LISTED, I THINK THAT WOULD BE CONFUSING.

23 UPON REFLECTION, I THINK THE APPROPRIATE ACTION  
24 TO TAKE WOULD BE TO SAY THAT IT IS THE EDITED VERSION THAT  
25 IS APPROPRIATE, AND THAT IS WHAT THEY SHOULD REVIEW AND

1 DELIBERATE ON.

2 MR. PANCER: MR. GURULE SEEMS TO COME TO THESE  
3 POSITIONS AFTER WE HAVE EXPRESSED OURS. HE OPERATES UNDER  
4 THE ASSUMPTION THAT IF WE WANT IT A CERTAIN WAY, IT MUST BE  
5 BEST TO DO IT THE OTHER WAY FOR THE GOVERNMENT.

6 YOUR HONOR, MY CONCERN IS THAT WE NOT CHANGE --

7 MR. GURULE: YOU READ THINGS INTO MY STATEMENTS.

8 MR. PANCER: I AM NOT SURE IT MATTERS.

9 MR. CAMPOS: PARANOIA.

10 MR. PANCER: I DON'T WANT TO PULL THE RUG OUT FROM  
11 UNDER THE JURY, SO TO SPEAK. I THINK THE INSTRUCTIONS ARE  
12 ESSENTIALLY THE SAME. I THINK THEY GET THE CORRECT MESSAGE  
13 TO THE JURY, EITHER ONE OF THEM, NOW THAT RAUL LOPEZ-ALVAREZ  
14 IS OUT OF THE CASE.

15 ON THE OTHER HAND, I DON'T KNOW WHAT GOES THROUGH  
16 THE MINDS OF JURORS. I HAVE NEVER BEEN ABLE TO REALLY  
17 PREDICT. I THINK THEY SHOULD BE TOLD, AS I SAID BEFORE --  
18 IT IS NOT FAR DIFFERENT FROM WHAT THE COURT WAS SUGGESTING --  
19 THAT THESE INSTRUCTIONS ARE ESSENTIALLY OR IN SUBSTANCE THE  
20 SAME, AND THEY SHOULD CONTINUE THEIR DELIBERATIONS.

21 THE COURT: I AM WONDERING IF WE COULD SIMPLY  
22 STATE THAT THESE INSTRUCTIONS ARE ESSENTIALLY THE SAME, THE  
23 ONLY DIFFERENCE BEING THAT IN INSTRUCTION NO. 42 THE FOURTH  
24 AND FIFTH ELEMENTS WERE COMBINED AS THE FOURTH ELEMENT AND  
25 APPLY EQUALLY TO EACH DEFENDANT.

1 MS. BROOKS: I THINK THAT IS FINE, YOUR HONOR.  
2 COULD THE COURT PERHAPS SAY "EQUALLY AND INDIVIDUALLY TO  
3 EACH DEFENDANT"?

4 MR. CAMPOS: WE ARE CONCERNED WITH SENDING BOTH  
5 SETS BACK IN THAT THEY ARE NOT NUMBERED THE SAME WAY. IT  
6 SEEMS TO ME --

7 THE COURT: THAT HASN'T BEEN A PROBLEM FOR THE  
8 JURY, APPARENTLY. THE ONLY PROBLEM THEY HAVE IS OVER THESE  
9 TWO INSTRUCTIONS. THAT IS THE ONE THEY SENT THE NOTE ON.

10 MR. PANCER: MAY I SEE THEM AGAIN, YOUR HONOR.

11 MS. BROOKS: I THINK I'VE FOUND WHERE THE NUMBERING  
12 PROBLEM OCCURRED.

13 THE COURT: WHERE IS THAT?

14 MS. BROOKS: IF THE SECOND PACKET IS SENT BACK IN,  
15 YOUR HONOR -- I NOTICE THAT IN THE ORIGINAL PACKET WITH THE  
16 CASE NUMBER, COURT'S INSTRUCTION NO. 11 READS THAT "THE  
17 DEFENDANT HAS PLED NOT GUILTY TO THE CHARGE CONTAINED IN THE  
18 INDICTMENT. THIS PLEA PUTS IN ISSUE EACH OF THE ESSENTIAL  
19 ELEMENTS OF THE OFFENSE" -- AND SO ON. THAT IS MISSING FROM  
20 THE SECOND PACKET, AND THAT IS WHERE THE NUMBERING GETS OFF.

21 SO IF THE SECOND PACKET GOES BACK IN, YOU MIGHT  
22 WANT TO ADD THAT IN.

23 THE COURT: I THINK THAT THE BEST WAY TO HANDLE  
24 THIS IS TO PUT THE JURY IN THE BOX AND FOR ME TO CLARIFY  
25 THAT BY TELLING THEM ORALLY WHAT HAS TAKEN PLACE, AND THAT

1 THEY ARE ESSENTIALLY THE SAME, BUT THAT THIS ONE  
2 INSTRUCTION COMBINED THE OTHER TWO INTO A SINGLE ELEMENT,  
3 RATHER THAN HAVING THE TWO SEPARATE ELEMENTS.

4 MS. BROOKS: THAT WOULD BE FINE, YOUR HONOR.

5 MR. GURULE: THAT SOUNDS APPROPRIATE.

6 MS. BROOKS: YOUR HONOR, WOULD THAT SECOND  
7 INSTRUCTION PACKET HAVE TO GO BACK IN?

8 THE COURT: I THINK WE WILL JUST SEND THE ONE BACK.

9 MR. PANCER: THAT IS WHAT I WOULD BE CONCERNED  
10 ABOUT, YOUR HONOR. I BELIEVE WHAT THE COURT IS ABOUT TO  
11 INSTRUCT THE JURY IS APPROPRIATE. I BELIEVE, YOUR HONOR,  
12 THAT BOTH PACKETS SHOULD NOW STILL GO BACK TO THE JURY JUST  
13 BECAUSE THEY HAD BOTH, THEY HAVE BEEN DELIBERATING WITH BOTH  
14 FOR TWO AND A HALF DAYS. I DON'T THINK WE SHOULD TAKE ONE  
15 OF THESE PACKAGES AWAY FROM THE JURY AT THIS TIME.

16 THE COURT: THEY SHOULD BE IDENTICAL, SHOULDN'T  
17 THEY?

18 MR. GURULE: EXACTLY. WE DON'T WANT THE SET GOING  
19 BACK WHICH IS AN INAPPROPRIATE OR UNEDITED INSTRUCTION.

20 MR. PANCER: THE PROBLEM IS THAT THEY ARE NOT  
21 EXACTLY THE SAME. THEY HAVE NOT BEEN EXACTLY THE SAME.

22 THE COURT: THEY ARE THE EXACT, SAME INSTRUCTIONS.  
23 THEY MAY NOT BE NUMBERED IN THE SAME SEQUENCE. EXCEPT FOR  
24 THIS ONE THAT HAS BEEN POINTED OUT, I DON'T KNOW OF ANY OTHER  
25 VARIATIONS.

1 MR. PANCER: AND YOUR HONOR IS GOING TO CLARIFY  
2 THAT -- I UNDERSTAND THAT -- WHEN THEY COME BACK OUT. I  
3 THINK THEY SHOULD GO BACK IN WITH BOTH PACKAGES WITH YOUR  
4 HONOR'S CLARIFICATION. THAT CLEARS UP ANY PROBLEMS WITH  
5 THEM, AND IT DOES AWAY WITH, YOU KNOW, THE OBJECTION WE  
6 WOULD HAVE OF CHANGING THE PACKAGES OR CHANGING THE BASIS  
7 ON WHICH THEY HAVE BEEN DELIBERATING FOR THREE AND A HALF  
8 DAYS.

9 CLEARLY THE ONLY PERSONS WHO COULD REALLY HAVE AN  
10 OBJECTION TO THIS IS THE DEFENSE, YOUR HONOR, AND WE DO.

11 MR. CAMPOS: YOUR HONOR, IT SEEMS LIKE WHAT  
12 MR. PANCER IS SAYING IS WHETHER THEY ARE RIGHT OR WRONG THEY  
13 SHOULD GO BACK TO THE JURY, REGARDLESS. AND WE KNOW ALREADY  
14 THAT AT LEAST ONE INSTRUCTION WAS LEFT OUT OF ONE OF THE  
15 PACKAGES INADVERTENTLY, AND THEY ARE NUMBERED INCORRECTLY,  
16 AND THAT CERTAINLY CAN'T BE THE APPROPRIATE WAY TO DO IT.

17 IT IS OUR VIEW THAT THE COURT'S COMPROMISE TO  
18 EXPLAIN THE DIFFERENCES BETWEEN THE TWO INSTRUCTIONS AND SEND  
19 THEM BACK THE CORRECT PACKAGE IS APPROPRIATE, CLEARLY. I  
20 MEAN, SURELY I DON'T THINK ANY DEFENDANT WOULD ARGUE THAT AN  
21 INSTRUCTION THAT HAD GONE BACK TO THE JURY THAT WAS WRONG  
22 SHOULD GO BACK TO THE JURY JUST BECAUSE THEY STARTED OFF WITH  
23 IT.

24 MR. PANCER: WE FOUND SOME MORE ERRORS.  
25 YOUR HONOR, BASED ON THE ERRORS THAT WE ARE ABOUT

1 TO OUTLINE, IT IS OUR REQUEST THAT THIS CASE BE MISTRIED.  
2 WE THINK THE JURY HAS BEEN OPERATING --

3 THE COURT: SUPPOSE YOU OUTLINE THE ERRORS.

4 MS. BROOKS: IN CHECKING THE ORIGINAL PACKET THAT  
5 WAS SENT BACK TO THE JURY -- THE COURT'S INSTRUCTION NO. 46  
6 IS A VERY IMPORTANT INSTRUCTION TO THE DEFENSE. WE ARGUED  
7 IT TO THE JURY. IT IS THE DEFINITION OF A CONSPIRACY, AND  
8 IT READS IN THE SECOND PARAGRAPH:

9 "MERE SIMILARITY OF CONDUCT AMONG VARIOUS  
10 PERSONS, THE FACT THEY MAY HAVE ASSOCIATED  
11 TOGETHER" --

12 AND SO ON, DOES NOT NECESSARILY ESTABLISH PROOF OF THE  
13 EXISTENCE OF A CONSPIRACY. WE ARGUED THAT TO THE JURY, AND  
14 IT COMES STRAIGHT OUT OF DEVITT & BLACKMAR.

15 THE COURT: DID I GIVE IT?

16 MS. BROOKS: YES, YOUR HONOR. IN THE SECOND  
17 PACKET THAT WAS SENT BACK TO THE JURY THAT INSTRUCTION IS  
18 MISSING IN ITS ENTIRETY, AND INSTEAD COURT'S INSTRUCTION  
19 NO. 47 AND 48 ARE DUPLICATES OF EACH OTHER.

20 SO, IN OTHER WORDS, COURT'S INSTRUCTION --

21 THE COURT: WELL, READ --

22 MS. BROOKS: THEY ARE DUPLICATES OF EACH OTHER,  
23 AND COURT'S INSTRUCTION NO. 46 IN THE ORIGINAL PACKET IS  
24 MISSING IN ITS ENTIRETY.

25 THE COURT: SO THAT PARAGRAPH UPON WHICH YOU PLACE

1 SO MUCH RELIANCE -- I AM SURE THAT IS IN THIS INSTRUCTION AS  
2 WELL. SO DON'T GET EXCITED.

3 IN INSTRUCTION NO. 45, WHICH IS IN THIS SECOND  
4 SET, IT STATES ON THE SECOND PAGE:

5 "FIRST IN DETERMINING WHETHER A CONSPIRACY  
6 EXISTED, IT IS NOT NECESSARY THAT THE CONSPIRATORS  
7 MADE A FORMAL AGREEMENT OR THAT THEY AGREED ON  
8 EVERY DETAIL OF THE CONSPIRACY, BUT IT IS NOT  
9 ENOUGH THAT THEY SIMPLY MET, DISCUSSED MATTERS  
10 OF COMMON INTEREST, ACTED IN SIMILAR WAYS OR  
11 PERHAPS HELPED ONE ANOTHER. YOU MUST FIND BEYOND  
12 A REASONABLE DOUBT THAT THERE WAS A JOINT PLAN TO  
13 KIDNAP A FEDERAL AGENT."

14 SO THAT EXPLAINS IT PRETTY CLEARLY.

15 IF YOUR MOTION FOR A MISTRIAL IS BASED ON THAT,  
16 THE MOTION IS DENIED.

17 IT IS CLEAR THAT THERE HAVE BEEN SOME STAFF  
18 ERRORS ON THE COPYING AND SENDING THESE IN TO THE JURY, THE  
19 SECOND SET, AND I AM GOING TO CLARIFY FOR THE JURY THE  
20 DIFFERENCE THAT THEY INQUIRED ABOUT. THEY APPARENTLY DID NOT  
21 INQUIRE ABOUT THAT DIFFERENCE OR ANY OTHER DIFFERENCE,  
22 EXCEPT THE DIFFERENCE BETWEEN NOS. 42 AND 43.

23 I WILL CONVENE THE JURY, EXPLAIN TO THEM THAT  
24 ESSENTIALLY THOSE ARE THE SAME AND THAT THE ONLY DIFFERENCE  
25 WAS TO COMBINE TWO ELEMENTS INTO A SINGLE ONE, AND THEN I

1 WILL ASK THEM IF THERE ARE ANY OTHER INSTRUCTIONS THEY HAVE  
2 ANY DOUBT ABOUT. AND I BELIEVE THAT WE WILL EITHER MAKE  
3 THEM A COPY OF THIS SET OF INSTRUCTIONS SO THEY WILL HAVE  
4 TWO COPIES OF THE SAME SET, AND NOT SEND BACK THIS ONE THAT  
5 HAVE THESE DEVIATIONS IN THEM.

6 MR. PANCER: WILL YOUR HONOR ALSO -- I WOULD ASK,  
7 ONE, THAT YOUR HONOR REREAD 46, SINCE IT WASN'T IN ONE OF  
8 THE PACKAGES AND, TWO, MENTION TO THEM THAT THAT INSTRUCTION  
9 WASN'T IN ONE OF THE PACKAGES AND REREAD IT.

10 THE COURT: I COULD DO THAT.

11 MR. PANCER: I THINK THAT IS IMPORTANT.

12 AND INSTRUCTION NO. 11 WASN'T IN --

13 THE COURT: JUST A MOMENT.

14 MR. PANCER: I AM SORRY.

15 THE COURT: WHAT HAS 11 GOT TO DO WITH THIS?

16 MS. BROOKS: IT IS ALSO MISSING FROM THE SECOND  
17 PACKET, YOUR HONOR. THAT IS WHERE THE NUMBERING GETS OFF.  
18 IF THE JURORS HAVE BEEN RELYING ON THE LAW CONTAINED IN THE  
19 SECOND PACKET --

20 MR. GURULE: I HAD IT OUT OF ORDER, BUT I HAD IT  
21 LISTED IN MY PACKET AS NO. 16. I AM SURE IT IS IN THERE.

22 THE COURT: CHECK IT.

23 MR. GURULE: LET'S SEE IF IT IS LISTED AS 16.

24 YES, IT IS.

25 THE COURT: THERE IT IS. SO IT IS IN BOTH.



1 MR. GURULE: IT IS IN BOTH PACKETS.

2 THE COURT: THIS IS THE INSTRUCTION THAT:

3 "DEFENDANT HAS PLEADED" -- JUST A MOMENT --

4 "DEFENDANT HAS PLEADED NOT GUILTY TO THE CHARGE

5 CONTAINED IN THE INDICTMENT. THIS PLEA PUTS IN

6 ISSUE EACH OF THE ESSENTIAL ELEMENTS OF THE

7 OFFENSE AS DESCRIBED IN THESE INSTRUCTIONS AND

8 IMPOSES UPON THE GOVERNMENT THE BURDEN OF

9 ESTABLISHING EACH OF THESE ELEMENTS BY PROOF

10 BEYOND A REASONABLE DOUBT."

11 IN THE DUPLICATE SET THAT WAS SENT TO THE JURY

12 THIS WAS NUMBERED 16; WHEREAS, IN THE ORIGINAL SET IT WAS

13 NUMBERED 11. SO IT IS CONTAINED IN BOTH.

14 MR. PANCER: THEN WE NEED TO GO THROUGH THESE

15 AGAIN TO FIGURE OUT WHERE THE NUMBERING GOT OFF. I JUST

16 WANT TO MAKE SURE WE HAVE UNCOVERED ALL THE DIFFERENCES, YOUR

17 HONOR.

18 THE COURT: YOU SHOULD BOTH DO THAT SO THAT WE HAVE

19 AN AGREEMENT.

20 MR. PANCER: DID THEY JUST SAY THERE WAS ANOTHER

21 NOTE FROM THE JURY?

22 THE COURT: I DIDN'T HEAR THAT. WHO SAID THAT?

23 MR. PANCER: I THOUGHT THE SECRETARY CAME IN AND

24 SAID THE JURY HAD A QUESTION. I AM SORRY. I MIGHT HAVE

25 MISHEARD.

1 THE COURT: I DIDN'T HEAR IT.

2 MR. PANCER: I AM PROBABLY JUST NERVOUS.

3 (PAUSE.)

4 THE COURT: NOW, LET THE RECORD SHOW THAT ALL  
5 COUNSEL HAVE REVIEWED THE TWO SETS OF INSTRUCTIONS. HAVE  
6 YOU AGREED ON WHAT, IF ANY, OTHER DIFFERENCES THERE ARE?

7 MR. GURULE: IT APPEARS THAT THE ONLY DIFFERENCE  
8 IS THAT THERE HAS BEEN A MISNUMBERING OF A PARTICULAR  
9 INSTRUCTION, AND THAT INSTRUCTION READS AS FOLLOWS:

10 "AN ACT IS DONE WILLFULLY IF DONE VOLUNTARILY  
11 AND INTENTIONALLY AND WITH THE SPECIFIC INTENT TO  
12 DO SOMETHING THE LAW FORBIDS, THAT IS, FOR THE  
13 PURPOSE EITHER TO DISOBEY OR TO DISREGARD THE  
14 LAW."

15 THAT PARTICULAR INSTRUCTION IS IN BOTH PACKETS,  
16 BUT JUST IN DIFFERENT LOCATIONS, AND THAT HAS CAUSED A  
17 MISNUMBERING, BUT IT IS IN BOTH.

18 THE COURT: OTHERWISE -- I THOUGHT YOU WERE  
19 FINISHED.

20 MS. BROOKS: NO, NOT QUITE, YOUR HONOR.

21 (PAUSE.)

22 MS. BROOKS: THIS IS THE ONE THAT IS MISSING,  
23 INSTRUCTION 46, IN THE COURT'S PACKET.

24 (DISCUSSION OFF THE RECORD.)

25 THE COURT: WILL SOMEBODY NOW STATE FOR THE RECORD,

1 AFTER YOU HAVE REVIEWED THESE, WHAT, IF ANYTHING, YOU HAVE  
2 FOUND.

3 MS. BROOKS: YES, YOUR HONOR. AFTER REVIEWING  
4 THE -- I WILL CALL IT THE COURT'S ORIGINAL INSTRUCTION  
5 PACKET, WHICH IS WHAT THE COURT READ TO THE JURY. IN THAT,  
6 YOUR HONOR, COURT'S INSTRUCTION NO. 11 IS THE SAME AS  
7 COURT'S INSTRUCTION NO. 16 IN THE SECOND PACKET. SO THAT  
8 IS TAKEN CARE OF.

9 COURT'S INSTRUCTION NO. 35 IS THE SAME AS  
10 INSTRUCTION 46 IN THE SECOND PACKET, SO THAT IS TAKEN CARE  
11 OF.

12 THE PROBLEM IS COURT'S INSTRUCTION NOS. 46 AND 47  
13 ARE MISSING IN THEIR ENTIRETY IN THE COURT'S SECOND PACKET.  
14 THESE WERE TWO INSTRUCTIONS THAT WERE SUBMITTED BY THE  
15 DEFENDANT REGARDING THE DEFINITION OF CONSPIRACY THAT WERE  
16 ARGUED BY THE DEFENSE IN CLOSING ARGUMENT RATHER VEHEMENTLY  
17 AND THAT WERE GIVEN TO THE JURY ORIGINALLY.

18 THE COURT: LET ME SEE THOSE.

19 MS. BROOKS: YES, YOUR HONOR.

20 AND WE WOULD RENEW OUR MOTION FOR A MISTRIAL.

21 THE COURT: DID YOU SAY 46 AND 47?

22 MS. BROOKS: YES.

23 THE COURT: I DID READ THESE TO THE JURY?

24 MS. BROOKS: YES, YOUR HONOR.

25 THE COURT: ALL RIGHT. NOW, THEN, TO CLARIFY THE

1 JURY'S PROBLEM -- YOU MAKE A MOTION FOR MISTRIAL BECAUSE  
2 THESE INSTRUCTIONS WERE MISSING FROM THE SECOND PACKAGE OF  
3 INSTRUCTIONS?

4 MS. BROOKS: YES, YOUR HONOR. IT IS OUR CONCERN  
5 THAT HALF THE JURY HAS BEEN RELYING ON THE SECOND PACKAGE  
6 THAT IS MISSING SOME OF THE LANGUAGE CONTAINED IN  
7 INSTRUCTIONS 46 AND 47, AND BECAUSE OF THE OBVIOUS CONFUSION  
8 BETWEEN INSTRUCTIONS 42 AND 43 IN A DIFFERENT LANGUAGE,  
9 THAT THERE MAY BE NO WAY TO UNDO --

10 THE COURT: ALL RIGHT. JUST MAKE YOUR OBJECTION.  
11 WE DON'T NEED ALL THE LANGUAGE ON THE RECORD.

12 MS. BROOKS: WE WOULD MOVE FOR A MISTRIAL AT THIS  
13 TIME, YOUR HONOR.

14 THE COURT: THE MOTION IS DENIED. ESSENTIALLY  
15 THESE INSTRUCTIONS ARE CONTAINED, MAYBE IN DIFFERENT WORDS,  
16 IN BOTH PACKAGES.

17 IS THAT ALL NOW? HAVE WE COVERED EVERYTHING?

18 MR. GURULE: YES, YOUR HONOR.

19 MS. BROOKS: YES, YOUR HONOR.

20 THE COURT: THE COURT WILL CONVENE THE JURY,  
21 EXPLAIN TO THEM THE DIFFERENCES BETWEEN 42 AND 43, AND TELL  
22 THEM THAT THEY ARE ESSENTIALLY THE SAME, THAT THEY WERE  
23 SIMPLY MODIFIED TO READ A LITTLE BETTER; THAT 46 AND 47 ARE  
24 MISSING FROM THE SECOND SET OF INSTRUCTIONS, AND I WILL READ  
25 THOSE AGAIN TO THEM.

1 THAT WOULD COVER IT, WOULDN'T IT?

2 MR. PANCER: YES, YOUR HONOR.

3 MR. RANDOLPH: WILL THE COURT BE SENDING IN THE  
4 SECOND SET OF INSTRUCTIONS, YOUR HONOR?

5 THE COURT: I THINK IF WE SEND IN THE SECOND SET,  
6 WE WILL MAKE A SECOND SET OF THE COURT'S ORIGINAL  
7 INSTRUCTIONS. JUST RUN OFF A COPY AND SEND THAT IN.

8 MS. BROOKS: COULD THE JURY ALSO BE TOLD THAT THAT  
9 IS WHAT IS HAPPENING.

10 THE COURT: YES.

11 MR. PANCER: FOR THE RECORD, WE WOULD WANT THE  
12 INSTRUCTION 43 THAT WAS IN THE SECOND PACKAGE TO GO BACK TO  
13 THE JURY.

14 THE COURT: WE WILL RECONVENE THEM WHEN THEY  
15 RETURN FROM LUNCH AND DO THAT.

16 MR. RANDOLPH: WHAT TIME WOULD YOU LIKE US HERE?

17 THE COURT: THEY HAVEN'T LEFT FOR LUNCH YET, HAVE  
18 THEY?

19 THE CLERK: THEY ARE READY TO GO, AND THE BUS IS  
20 HERE.

21 THE COURT: ARE THE DEFENDANTS HERE?

22 THE CLERK: YES, THEY ARE.

23 THE COURT: WHY DON'T WE DO THAT NOW.

24 \* \* \*

25

LOS ANGELES, CALIFORNIA; MONDAY, SEPTEMBER 26, 1988; 12:05 PM

1 (JURY PRESENT.)

2 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THE  
3 COURT HAS CONVENED YOU IN ORDER TO EXPLAIN -- TO ANSWER THE  
4 QUESTION THAT YOU SENT TO THE COURT REGARDING THE APPARENT  
5 DIFFERENCES IN INSTRUCTIONS 42 AND 43 FROM THE TWO SETS.  
6 I WANT TO EXPLAIN THAT THOSE INSTRUCTIONS, WHILE THEY ARE  
7 DIFFERENT IN TERMINOLOGY, ARE EXACTLY THE SAME IN SUBSTANCE,  
8 AND I WILL TELL YOU WHAT WE DID, AND WE ARE SORRY THAT WE  
9 DID NOT HAVE THE SAME VERSION IN BOTH INSTRUCTIONS.

10 BUT INSTRUCTION NO. 43 FROM THE DUPLICATE SET  
11 CONTAINED FIVE ELEMENTS, AND ALL THAT WAS DONE TO MAKE THEM  
12 THE SAME, INSTEAD OF LISTING THE NAME OF EACH DEFENDANT --  
13 FOR EXAMPLE, INSTRUCTION 43 SAID THAT AS TO THE DEFENDANT  
14 VERDUGO, THAT HE WILLFULLY PARTICIPATED OR WILLFULLY AIDED  
15 AND ABETTED THE COMMISSION OF THE KIDNAPPING OR MURDER FOR  
16 THE PURPOSES SPECIFIED. AND THE FIFTH STATED THAT AS TO  
17 DEFENDANT LOPEZ-ALVAREZ, THAT HE WILLFULLY PARTICIPATED OR  
18 WILLFULLY AIDED AND ABETTED THE COMMISSION OF THE KIDNAPPING  
19 OR MURDER FOR THE PURPOSES SPECIFIED.

20 INSTEAD OF LISTING THEM SEPARATELY, WE COMBINED  
21 THOSE TWO ELEMENTS TO STATE THAT THE DEFENDANTS WILLFULLY  
22 PARTICIPATED OR WILLFULLY AIDED AND ABETTED THE COMMISSION  
23 OF THE KIDNAPPING OR MURDER FOR THE PURPOSES SPECIFIED.  
24 THAT IS THE ONLY DIFFERENCE BETWEEN THE TWO. SO ELEMENT  
25 FOUR, THAT THE ELEMENTS WILLFULLY PARTICIPATED OR WILLFULLY

1 AIDED AND ABETTED THE COMMISSION OF THE KIDNAPPING OR  
2 MURDER FOR THE PURPOSES SPECIFIED APPLIES EQUALLY TO BOTH  
3 OF THE DEFENDANTS WHO WERE CHARGED WITH THAT OFFENSE,  
4 MR. VERDUGO AND MR. LOPEZ-ALVAREZ.

5 DOES THAT CLARIFY IT?

6 THE FOREPERSON: NO. I THINK OUR QUESTION, YOUR  
7 HONOR, WAS ON INSTRUCTION NO. 42, THE ONE THAT IS MARKED  
8 WITH THE CASE NUMBER.

9 THE COURT: YES.

10 THE FOREPERSON: IT SUGGESTS THAT WE SHOULD USE  
11 FOUR ESSENTIAL ELEMENTS. ON THE OTHER ONE IT SUGGESTED WE  
12 USE THREE ELEMENTS.

13 THE COURT: THAT WAS ERRONEOUS. THAT ONE SHOULD  
14 REALLY READ FIVE ELEMENTS BECAUSE WE HAD LISTED FIVE ELEMENTS  
15 ON INSTRUCTION 43. BUT WHEN THAT WAS CORRECTED -- THIS  
16 DUPLICATE WAS SENT IN INADVERTENTLY AND IT SHOULD NOT HAVE  
17 BEEN BECAUSE THIS WAS BEFORE WE CHANGED IT TO INSTRUCTION  
18 NO. 42.

19 IT IS SIMPLY IMPORTANT TO UNDERSTAND THAT THE  
20 INSTRUCTION APPLIES TO EACH OF THE DEFENDANTS WHO WERE  
21 CHARGED WITH THAT OFFENSE.

22 THE FOREPERSON: ALL RIGHT. WE HAVE BEEN USING --  
23 UNTIL TODAY WE HAVE BEEN USING THE ONE WITH THE CASE NUMBER  
24 ON IT.

25 THE COURT: YOU HAVE BEEN USING THAT ENTIRELY?

1 THE FOREPERSON: ENTIRELY, YES.

2 THE COURT: UP UNTIL TODAY. TODAY IS THE FIRST  
3 TIME YOU LOOKED AT THE OTHER ONE?

4 THE FOREPERSON: YES, TODAY IS THE FIRST TIME THAT  
5 WE USED THE OTHER ONE.

6 THE COURT: ALL RIGHT. I AM GLAD YOU BROUGHT THIS  
7 TO OUR ATTENTION. NOW, SINCE YOU DID BRING IT TO OUR  
8 ATTENTION AND BECAUSE OF OUR CONCERN, WE WENT THROUGH THE  
9 SECOND SET TO DETERMINE WHETHER OR NOT THERE WERE ANY OTHER  
10 INSTRUCTIONS THAT WERE NOT INCLUDED IN IT THAT SHOULD HAVE  
11 BEEN, AND WE FOUND TWO THAT ARE CONTAINED IN THE SET OF  
12 INSTRUCTIONS THAT HAS THE COURT'S CASE NUMBER ON IT THAT  
13 WERE GIVEN TO YOU ORALLY HERE IN COURT, BUT THE COPY OF  
14 WHICH WERE NOT INCLUDED IN THE SECOND SET, AND I AM GOING TO  
15 READ THOSE TO YOU AT THIS TIME SO THAT YOU WILL BE REMINDED  
16 OF THEM, AND THEY RELATE TO THE CRIME OF CONSPIRACY.

17 "INSTRUCTION NO. 46: A CONSPIRACY IS A  
18 COMBINATION OF TWO OR MORE PERSONS BY CONCERTED  
19 ACTION TO ACCOMPLISH SOME UNLAWFUL PURPOSE OR TO  
20 ACCOMPLISH SOME LAWFUL PURPOSE BY UNLAWFUL MEANS.  
21 SO A CONSPIRACY IS A KIND OF PARTNERSHIP IN  
22 CRIMINAL PURPOSES IN WHICH EACH MEMBER BECOMES  
23 THE AGENT OF THE OTHER MEMBER. THE GIST OF THE  
24 OFFENSE IS A COMBINATION OR AGREEMENT TO DISOBEY  
25 OR TO DISREGARD THE LAW. MERE SIMILARITY OF CONDUCT



1        AMONG VARIOUS PERSONS AND THE FACT THAT THEY MAY  
2        HAVE ASSOCIATED WITH EACH OTHER AND MAY HAVE  
3        ASSEMBLED TOGETHER AND DISCUSSED COMMON AIMS AND  
4        INTERESTS DOES NOT NECESSARILY ESTABLISH PROOF  
5        OF THE EXISTENCE OF A CONSPIRACY. HOWEVER, THE  
6        EVIDENCE IN THE CASE NEED NOT SHOW THAT THE  
7        MEMBERS ENTERED INTO ANY EXPRESS OR FORMAL  
8        AGREEMENT OR THAT THEY DIRECTLY BY WORDS SPOKEN  
9        OR IN WRITING STATED BETWEEN THEMSELVES WHAT  
10       THEIR OBJECT OR PURPOSE WAS TO BE OR THE DETAILS  
11       THEREOF OR THE MEANS BY WHICH THE OBJECT OR PURPOSE  
12       WAS TO BE ACCOMPLISHED.

13        "WHAT THE EVIDENCE IN THE CASE MUST SHOW  
14       BEYOND A REASONABLE DOUBT IN ORDER TO ESTABLISH  
15       PROOF THAT A CONSPIRACY EXISTED IS THAT THE MEMBERS  
16       IN SOME WAY OR MANNER OR THROUGH SOME CONTRIVANCE,  
17       POSITIVELY OR TACITLY, CAME TO A MUTUAL  
18       UNDERSTANDING TO TRY TO ACCOMPLISH A COMMON AND  
19       UNLAWFUL PLAN.

20        "THE EVIDENCE IN THE CASE NEED NOT ESTABLISH  
21       THAT ALL THE MEANS OR METHODS SET FORTH IN THE  
22       INDICTMENT WERE AGREED UPON TO CARRY OUT THE  
23       ALLEGED CONSPIRACY, NOR THAT ALL MEANS OR METHODS  
24       WHICH WERE AGREED UPON WERE ACTUALLY USED OR PUT  
25       INTO OPERATION, NOR THAT ALL OF THE PERSONS

1 CHARGED TO HAVE BEEN MEMBERS OF THE ALLEGED  
2 CONSPIRACY WERE SUCH. WHAT THE EVIDENCE IN THE  
3 CASE MUST ESTABLISH BEYOND A REASONABLE DOUBT  
4 IS THAT THE ALLEGED CONSPIRACY WAS KNOWINGLY  
5 FORMED AND THAT ONE OR MORE OF THE MEANS OR  
6 METHODS DESCRIBED IN THE INDICTMENT WERE AGREED  
7 UPON TO BE USED IN AN EFFORT TO EFFECT OR  
8 ACCOMPLISH SOME OBJECT OR PURPOSE OF THE CONSPIRACY  
9 AS CHARGED IN THE INDICTMENT AND THAT TWO OR MORE  
10 PERSONS, INCLUDING ONE OR MORE OF THE ACCUSED,  
11 WERE KNOWINGLY MEMBERS OF THE CONSPIRACY AS  
12 CHARGED IN THE INDICTMENT."

13 INSTRUCTION 47 READS AS FOLLOWS:

14 "ONE MAY BECOME A MEMBER OF THE CONSPIRACY  
15 WITHOUT FULL KNOWLEDGE OF ALL OF THE DETAILS OF  
16 THE CONSPIRACY. ON THE OTHER HAND, A PERSON WHO  
17 HAS NO KNOWLEDGE OF A CONSPIRACY, BUT HAPPENS TO  
18 ACT IN A WAY WHICH FURTHERS SOME OBJECT OR PURPOSE  
19 OF THE CONSPIRACY, DOES NOT THEREBY BECOME A  
20 CONSPIRATOR.

21 "BEFORE THE JURY MAY FIND THAT A DEFENDANT  
22 OR ANY OTHER PERSON HAS BECOME A MEMBER OF A  
23 CONSPIRACY, THE EVIDENCE IN THE CASE MUST SHOW  
24 BEYOND A REASONABLE DOUBT THAT THE CONSPIRACY  
25 WAS KNOWINGLY FORMED AND THAT THE DEFENDANT OR

1 OTHER PERSONS WHO ARE CLAIMED TO HAVE BEEN A  
2 MEMBER WILLFULLY PARTICIPATED IN THE UNLAWFUL  
3 PLAN WITH THE INTENT TO ADVANCE OR FURTHER SOME  
4 OBJECT OR PURPOSE OF THE CONSPIRACY.

5 "TO ACT OR PARTICIPATE WILLFULLY MEANS TO  
6 ACT OR PARTICIPATE VOLUNTARILY AND INTENTIONALLY  
7 AND WITH SPECIFIC INTENT TO DO SOMETHING THE LAW  
8 FORBIDS, THAT IS TO SAY, TO ACT OR PARTICIPATE  
9 WITH THE PURPOSE EITHER TO DISOBEY OR TO  
10 DISREGARD THE LAW. SO IF A DEFENDANT OR ANY  
11 OTHER PERSON WITH UNDERSTANDING OF THE UNLAWFUL  
12 CHARACTER OF A PLAN KNOWINGLY ENCOURAGES, ADVISES  
13 OR ASSISTS FOR THE PURPOSE OF FURTHERING THE  
14 UNDERTAKING OR SCHEME, HE THEREBY BECOMES A  
15 WILLFUL PARTICIPANT, A CONSPIRATOR, ONE WHO  
16 WILLFULLY JOINS AN EXISTING CONSPIRACY, CHARGED  
17 WITH THE SAME RESPONSIBILITY AS IF HE HAD BEEN  
18 ONE OF THE ORIGINATORS OR INSTIGATORS OF THE  
19 CONSPIRACY.

20 "IN DETERMINING WHETHER A CONSPIRACY EXISTED,  
21 THE JURY SHOULD CONSIDER THE ACTIONS AND  
22 DECLARATIONS OF ALL OF THE ALLEGED PARTICIPANTS.  
23 HOWEVER, IN DETERMINING WHETHER A PARTICULAR  
24 DEFENDANT WAS A MEMBER OF THE CONSPIRACY, IF ANY,  
25 THE JURY SHOULD CONSIDER ONLY HIS ACTS AND

1 STATEMENTS. HE CANNOT BE BOUND BY THE ACTS OR  
2 DECLARATIONS OF OTHER PARTICIPANTS UNTIL IT IS  
3 ESTABLISHED THAT A CONSPIRACY EXISTED AND THAT  
4 HE WAS ONE OF ITS MEMBERS."

5 THOSE ARE THE TWO INSTRUCTIONS THAT I HAD READ TO  
6 YOU PREVIOUSLY, BUT WHICH WERE OMITTED FROM THE SECOND  
7 PACKAGE. NOW, TO ENSURE THAT THIS DOES NOT HAPPEN AGAIN,  
8 WE ARE GOING TO MAKE AN EXACT COPY OF THE SET OF  
9 INSTRUCTIONS THAT I READ TO YOU IN COURT AND WHICH HAS THE  
10 COURT'S CASE NUMBER ON IT AND SEND THAT IN IN PLACE OF THE  
11 OTHER INSTRUCTIONS.

12 COUNSEL, HAS THE COURT COVERED THE MATTERS WE  
13 DISCUSSED?

14 MS. BROOKS: YES, YOUR HONOR.

15 MR. GURULE: YES, YOUR HONOR. THANK YOU, YOUR  
16 HONOR.

17 THE COURT: ALL RIGHT. THE JURY IS EXCUSED.  
18 SORRY THAT WE DELAYED YOUR LUNCH, BUT I UNDERSTAND THAT THE  
19 VEHICLE IS AWAITING YOU.

20 (NOON RECESS FROM 12:30 P.M. UNTIL 1:30 P.M.)

21 - - -

22 I CERTIFY THAT THE FOREGOING IS A CORRECT  
23 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS  
24 IN THE ABOVE-ENTITLED MATTER.

25 Velma B. Thomas  
OFFICIAL REPORTER

10/25/88  
DATE